IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16459 of 2007
With
SPECIAL CIVIL APPLICATION No. 16460 of 2007
With
SPECIAL CIVIL APPLICATION No. 16461 of 2007
With
SPECIAL CIVIL APPLICATION No. 16463 of 2007
With
SPECIAL CIVIL APPLICATION No. 16468 of 2007
With
SPECIAL CIVIL APPLICATION No. 16469 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

1 to 5 NO

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BHAGCHAND KHUSHALCHAN JAIN - Petitioner(s)
Versus
THE CHIEF CONTROLLING AUTHORITY & 2 - Respondent(s)

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Appearance :

MR BALRAM D JAIN for Petitioner(s) : 1,
MS NISHA PARIKH AGP with MR SUNIT SHAH GP for Respondent(s) :1-3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 25/07/2007

ORAL JUDGMENT :

1. The petitioners have approached this court under Article 226 of the Constitution with a grievance that, by the impugned orders under the provisions of section 32-A of the Bombay Stamp Act, 1952 (for short, "the Act"), market value of the properties, which are the subject-matter of several instruments, have been wrongly determined and even applications for allowing the petitioners to deposit 25% of the difference of duty for the purpose of making a reference under the provisions of Section 32-B of the Act have been rejected on the ground of delay, even as the petitioners have not been served with notices issued and orders made in the proceedings under section 32-A of the Act.

2. However, by filing affidavit-in-reply of Deputy Collector, Stamp Duty Valuation Organization, Surat-2, it is stated that the petitioners have been issued notices under Rule 4 (2) of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 by Registered Post A/D at the address given in the sale deed and, even as acknowledgment slips were not found on record, the petitioners have neglected to attend the proceedings, as a result of which the

impugned orders assessing the market value and required stamp duty have been made. It was, however, submitted on behalf of the respondents that they would have no objection to the petitioners depositing 25% of the amount of difference of duty payable by them and making an application, accompanied by requisite fee, requiring the Collector to draw up a statement of the case for reference to the Chief Controlling Revenue Authority for the purpose of seeking a final decision by the authority. It was stated by way of concession that, in absence of specific date and evidence of service of the orders made under section 32-A of the Act, the Authority will not raise the issue of limitation and the amount required to be deposited with the Collector for making reference will be accepted by supplying to the petitioners essential challans and, after reference being made, the authority shall consider the case of the petitioners on merits and decide the same in accordance with law after giving to the petitioners an opportunity of being heard. It was also stated that, in the meantime, recovery or any other coercive process for recovery of deficit stamp duty shall not be pursued, provided the petitioners approach the appropriate authority and deposit the requisite amount with their applications under section 32-B of the Act within a period of three weeks from

today. Learned counsel for the petitioners stated that such applications and deposit will be made on or before 14.08.2007.

3. Therefore, subject to the parties abiding by the above statement, petitions are partly allowed with the direction that, if the petitioners make applications and deposit the requisite amount in accordance with the provisions of section 32-B of the Act, Collector concerned shall draw up a statement of the case and refer it to the Chief Controlling Revenue Authority within a period of 60 days from the receipt of such application and the authority shall consider the cases of the petitioners and decide the same on merits in accordance with law after affording to the petitioners an opportunity of being heard, as expeditiously as practicable and preferably within a period of two months of receipt of the reference; and, in the meantime, no recovery shall be effected pursuant to the impugned orders of the Deputy Collector, Surat for payment of deficit stamp duty. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)